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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/547,965

09/08/2005

Hanjo Yang

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6462

29338 7590 12/03/2008

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EXAMINER

HOPKINS, CHRISTINE D

ART UNIT

PAPER NUMBER

3735

MAIL DATE

DELIVERY MODE

12/03/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/547,965	Applicant(s) YANG, HANJO	
	Examiner CHRISTINE D. HOPKINS	Art Unit 3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action is responsive to the Amendment filed 4 August 2008. Claims 1 and 6 are now pending. The Examiner acknowledges the amendments to claims 1 and 6, as well as the cancellation of claims 3 and 5.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

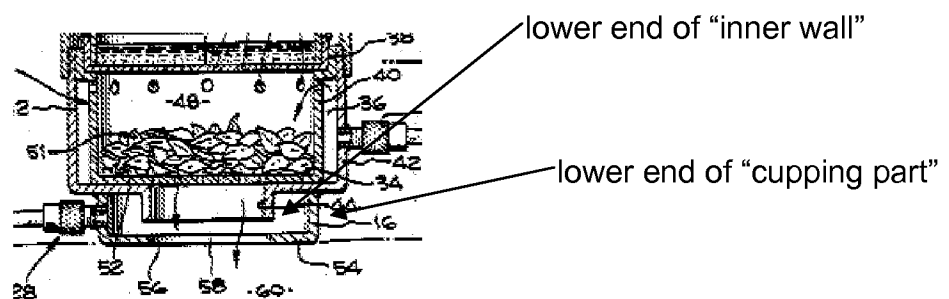
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No: 3946733 to Han (hereinafter "Han"). Han teaches a cupping and moxibustion device, which includes a moxa pot (32) located on the upper portion (12) for containing moxa (51) therein, a moxibustion part formed just above the treatment opening (56) of the lower treatment portion (58) to communicate with the moxa pot (32), and a cupping part (16) divided from the upper portion and the moxibustion part and located around the moxibustion part (fig. 2), comprising: a body (10) having a seat (34) formed therein for seating the moxa pot (32) inside the body and a smoke discharge hole (28) formed on a side thereof, the smoke discharge hole being located below the seat and above the moxibustion part to communicate with the moxa pot (col. 3, lines 1-26); an air pump (18) connected with the air suction hole (22) to supply air into the body,

Art Unit: 3735

whereby moxa (51) contained in the moxa pot (32) is burned when the air pump is operated and the air is forcibly induced into the body, at which time, heat and smoke of the moxa are moved downwardly toward the moxibustion part, and then, discharged to the outside through the smoke discharge hole (col. 3, line 65 to col. 4, line 10).

The air pump (18) is connected to the air suction hole and an air suction pipe, and a valve (24) is mounted on the air suction pipe (20), whereby an amount of the air supplied into the body can be controlled. The seat (34) is located on the upper portion (12) of the body (10) to catch the moxa pot (32) therein, and the moxibustion and cupping part respectively are located on the lower portion and are formed integrally in such a way as to form the body and are divided by the inner wall (44). The inner wall comprises a lower end and the cupping part (16) comprises a lower end, wherein the lower end of the inner wall and the lower end of the cupping part are substantially in the same plane (see depiction).



The body also includes an air discharge hole (28) formed on the outer wall thereof to communicate with the cupping part (16), and an opening and closing unit (30) is

Art Unit: 3735

inserted into the air discharge hole, for maintaining pressure inside the cupping part by controlling an air flow between the inside and the outside of the cupping part (col. 3, lines 61-65).

Han however does not teach that air suction hole (22) is connected to the lid (14) of the body (10). Applicant has not disclosed that having the air suction hole located on the lid instead of on the body of the moxibustion device solves any stated problem or is for any particular purpose. Moreover, it appears that the air hole placement of Han, or applicant's invention, would perform equally well with the hole for the air pump at any location above the base of the moxa pot. Accordingly, it would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to have modified Han such that the port for the air pump is located on the lid because such a modification would have been considered a mere design consideration which fails to patentably distinguish over Han.

Response to Arguments

4. Applicant's arguments filed 4 August 2008 with respect to the rejection of claims 1, 3, 5 and 6 under 35 U.S.C. 103(a) citing Han ('733) have been fully considered but are moot in view of the new grounds of rejection under 35 U.S.C. 103(a) citing Han ('733). Applicant contends that Han does not teach that the inner wall comprises a lower end and the cupping part comprises a lower end, wherein the lower ends of both are substantially in a same plane. However, this argument is not persuasive. A picture presented above in the rejection clarifies the new limitations as being taught by Han.

Furthermore, inclusion of the term "substantially" in the claim language does not mean that the lower ends of the inner wall and cupping part necessarily and absolutely must reside in the same plane. In view of the foregoing, the rejection of claims 1 and 6 under 35 U.S.C. 103(a) citing Han ('733) has been maintained.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTINE D. HOPKINS whose telephone number is (571)272-9058. The examiner can normally be reached on Monday-Friday, 7 a.m.-3:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II can be reached on (571) 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Charles A. Marmor, II/
Supervisory Patent Examiner, Art
Unit 3735

Christine D Hopkins
Examiner
Art Unit 3735